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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ***WC Docket No. 02-359***

Dear Ms Dortch.

Enclosed for filing in the above-captioned proceeding are an original and four copies of the amended Post-Hearing Brief of Verizon Virginia Inc. In addition, we are enclosing eight copies for the arbitrator. Verizon's Post-Hearing Brief, filed on October 27, 2003, contained a number of citations to the Unedited Hearing Transcript. The amended Post-Hearing Brief corrects those citations Thank you.

Sincerely,

Kimberly A. Newman
of O'Melveny & Myers LLP

cc: Stephen T. Perkins
Martin W Clift, Jr
Richard U Stubbs
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Ms. Margaret Dailey

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Cavalier Telephone, LLC	)	
Pursuant to Section 252(e)(5) of the	)	WC Docket No. 02-359
Communications Act for Preemption	)	
of the Jurisdiction of the Virginia State	)	
Corporation Commission Regarding	)	
Interconnection Disputes with Verizon	)	
Virginia, Inc. and for Arbitration	)	

POST HEARING BRIEF OF VERIZON VIRGINIA INC.

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

I. INTRODUCTION

Many of the issues in this proceeding have been decided before, either by the Federal Communications Commission ("Commission") in its decision granting Verizon Virginia, Inc.'s ("Verizon's") application to provide long distance service in Virginia ("*Virginia § 271 Order*") or by the Commission's Wireline Competition Bureau (the "Bureau") in its June 17, 2002 Order in the Virginia Arbitration proceeding. For example, the Commission has found that Verizon is providing services such as unbundled loops, pole attachments, directory listings, and dark fiber in compliance with the Telecommunications Act of 1996 ("the Act"), and the Bureau has rejected many of Cavalier's claims about the scope of Verizon's billing obligations. Cavalier Telephone, LLC ("Cavalier") has not offered any persuasive reasons why those issues should be decided differently here.

In other issues, Cavalier attempts to shift to Verizon network rearrangement costs that all other carriers bear on their own and to impose unwarranted penalties that ignore existing performance assurance plans. In addition, Cavalier inappropriately asks the Bureau to address industry-wide billing and retail E 9-1-1 issues that do not belong in a two-party arbitration proceeding. Finally, Cavalier attempts to use this arbitration to impose rates on Verizon for "trunk rolls" and "winbacks," among other things, even though the Bureau has ruled that it lacks jurisdiction to approve such rates.

The Bureau should reject Cavalier's proposals and adopt Verizon's contract language.

II. CAVALIER'S NETWORK REARRANGEMENT PROPOSAL INAPPROPRIATELY SHIFTS ITS COSTS OF INTERCONNECTION TO VERIZON, AND SHOULD THEREFORE BE REJECTED (ISSUE C2)

Cavalier's Proposed Section 9.6 would require Verizon to pay for Cavalier's network rearrangements whenever they relate in some way to changes that Verizon has to make to its own

network, such as the installation of new tandems, in response to growing or changing demand. Cavalier's contract proposal on this issue should be rejected for at least three reasons. First, Cavalier erroneously claims that Verizon should pay for Cavalier's costs because Verizon is the only carrier that benefits from network rearrangements such as tandem "re-homings." But, if Verizon does not add tandem capacity when a tandem exhausts, all carriers connected to that tandem will experience trunk blockage and service disruptions; therefore, any measures taken to prevent trunk blockage benefit all carriers. Second, Cavalier claims that Verizon compensates independent telephone companies for the costs they incur as part of any necessary network rearrangements, but Verizon witness Albert has explained that this is not the case. Third, Cavalier asserts that tandem re-homings cause Cavalier to pay for duplicate facilities and incur delays that are Verizon's fault, but the evidence shows that this is just not true.

As telecommunications traffic grows and as new technology is introduced, Verizon must expand and rearrange its network in order to assure adequate transport and switching capacity for all carriers that use its network. *Albert Panel Direct* at 5:3-6. As Verizon witness Albert explained, there is "explosive CLEC growth" in Virginia, and nearly 275,000 CLEC trunks have been added in just under eight years. *Hearing Tr.* at 47:6-7 (Albert).

Verizon must add tandem switches to accommodate this trunk growth. Tandem switches establish a connection between trunks of various carriers, including CLECs, interexchange carriers, wireless carriers, some independent telephone companies, and Verizon. A tandem switch, however, can handle only so many trunks. When the number of trunks has grown so high that this limit is reached, Verizon must add another tandem switch to the LATA network. In fact, since 1998, by far the single biggest contributor to tandem trunk growth has been the growth in CLEC trunks. For example, in Virginia there are now over 11,000 tandem trunks from

Verizon tandem switches to Cavalier. *Albert Panel Rebuttal* at 3:7-15. Indeed, the Bureau has acknowledged Verizon's need to add trunk groups and facilities in order to prevent trunk blockage. *Virginia Arbitration Order* ¶¶ 155-156.

At times, these necessary network rearrangements require all carriers, including CLECs like Cavalier, to make changes in their own networks. *Albert Panel Direct* at 5:9-10. All carriers benefit from these rearrangements. If Verizon does not add tandem capacity when a tandem exhausts, all carriers connected to that tandem will experience trunk blockage and service disruptions. *Albert Panel Direct* at 6:2-6. For this reason, no doubt, no CLEC interconnecting with Verizon has proposed language like the language Cavalier proposes here. *Albert Panel Direct* at 6:6-7. Instead, Verizon's longstanding arrangement with all CLECs is that each carrier bears the costs associated with network rearrangements such as a tandem re-homing. *Albert Panel Direct* at 5:10-13. This arrangement has worked well, and Cavalier has offered no good reason to change it.

Cavalier also claims that Verizon reimburses independent telephone companies under the same circumstances. This is not true. As Verizon witness Albert explained:

> We have not – Verizon or previously Bell Atlantic or previously C&P Telephone, back through the early '90s – we have not paid one nickel to any independent telephone company associated with network rearrangements. In addition to that, [George Bader, Director of Independent Telco Relations] said we've never had either an independent – and I can add to that a CLEC or wireless carrier request that we pay any of their costs associated with a network rearrangement.

Hearing Tr. at 10:4-12 (Albert).

Cavalier is also wrong when it claims that under Verizon's proposed language it will be forced to pay for duplicate facilities in the event of a tandem re-homing. Cavalier witness Cole testified that when Verizon establishes a new tandem, Cavalier must lease facilities to the new tandem and the old tandem while traffic is being re-homed. *Cole Direct* at 2:8-15. Again, this is

simply not the case. Under Verizon's proposed language, Cavalier does not need to lease facilities to the new tandem. Pursuant to Verizon's Proposed Section 4.1.1, Cavalier can establish a single point of interconnection ("POI") for all traffic in a LATA, and that point of interconnection will remain unchanged, regardless of how many tandem re-homings occur. *Albert Panel Direct* at 6:17-21.

As Verizon witness D'Amico further explained at the hearing, under this interconnection architecture on a going forward basis, Verizon will be responsible for transport costs on its side of the POI

> In section 4 of the interconnection agreement, Cavalier ... would be in control of establishing the point of interconnection, and each party would be responsible for their facilities on each side of the POI. So again, not to confuse the difference between the POI and the new tandem being added, if Cavalier chose to have a POI that wasn't at that tandem, then Verizon would be responsible for the transport to get to that particular tandem.

Hearing Tr at 30: 9-20 (D'Amico). As a result, Cavalier will not have to purchase transport facilities to connect to a new tandem. Although it could do so if it chooses, Cavalier will not be required to purchase these facilities under the agreement. *Albert Panel Rebuttal* at 4:25-26. Cavalier witness Clift acknowledged at the Hearing that he had not previously understood that under the parties' new agreement, Cavalier would not have to purchase additional facilities from the POI to the new tandem (*See Hearing Tr* at 71:3-6 (Clift/Dailey/Shetler/D'Amico)), despite the fact that the parties have been operating under this interconnection architecture since May of this year.

Cavalier's claim that Verizon causes the delays associated with tandem re-homings was also refuted at the hearing. As Verizon witness Albert explained, in the event of a tandem re-homing, Verizon always moves its traffic first. *Hearing Tr.* at 49:4-5 (Albert). But Verizon does not have sole control over the tandem re-homing process, and in many cases, it too is at the

mercy of other carriers that must cooperate to make the re-homing process proceed smoothly. For example, Cavalier had repeatedly complained about delays that occurred in the re-homing of the Turner Road tandem, but in that case, other carriers – not Verizon – contributed to the "delay." *Hearing Tr.* at 66:10-20 (Albert). In any event, the mere possibility of delays on some tandem re-homing projects does not justify language that would require Verizon to pay all of Cavalier's expenses for any Verizon network rearrangement. *Albert Panel Rebuttal* at 2:19-23 – 3:1-2. In fact, if Cavalier is dissatisfied with the "delays" associated with tandem re-homings that involve multiple carriers, Cavalier could completely avoid them by moving its traffic off Verizon's tandems and connecting directly with other carriers' networks. *Albert Panel Rebuttal* at 4:2-4.

For all these reasons, the Bureau should reject Cavalier's Proposed Section 9.6.

III. VERIZON SHOULD NOT BE REQUIRED TO POLICE BILLING INFORMATION FROM THIRD PARTIES AND TO GUARANTEE CAVALIER'S REVENUE FROM THOSE THIRD PARTIES (ISSUE C3)

This issue involves calls originated by carriers other than Cavalier or Verizon that are sent to Verizon's tandem switch and then to Cavalier for termination. The originating carrier is supposed to pass billing information for these calls to Verizon, so that Verizon can record and pass the information on to Cavalier. Cavalier may then use this information to bill the originating carrier for Cavalier's terminating services. *Smith Direct* at 3:8-14.

Cavalier proposes language that would require Verizon to obtain more billing information than industry guidelines require and, if Verizon does not obtain all of Cavalier's desired information, would hold Verizon responsible for Cavalier's terminating charges. Cavalier's Proposed Sections 1.12(b), 1.46, 1.48, 1.62(a), 1.87, 5.6.1, 5.6.6, 5.6.6.1, 5.6.6.2, 6.3.9, 7.2.2. The Bureau should reject this language. Verizon passes to Cavalier all the

information it receives from the originating carrier. It has no control over the accuracy or completeness of this information. Verizon should not be penalized because the originating carrier sometimes fails to send Verizon all the billing information Cavalier wants. This issue is an industry-wide concern that is currently being addressed by the industry's Ordering and Billing Forum ("OBF"). It cannot be resolved in a two-party arbitration.

Finally, the Verizon tandem transit services at issue here are not required by the Act (*Virginia Arbitration Order* ¶ 119), and imposing Cavalier's burdensome requirements on these services will simply force Verizon to stop providing them. The Bureau should therefore reject Cavalier's proposal in its entirety.

Verizon's proposed contract language would require Verizon to provide information to Cavalier consistent with guidelines set by the OBF ("Industry Guidelines"). This makes sense since proper billing is an industry-wide concern that requires the cooperation of all carriers. *See Smith Direct* at 4:15-16 (Verizon can only pass information other carriers provide to it), 9: 21-24 (Cavalier admission of industry-wide concern); *Smith Rebuttal* at 7:24 – 8: 2 (billing affects entire industry); *Hearing Tr.* at 96:17-19, 97:19 – 98:6 (Smith) (industry problem regarding LNP lookups); *Hearing Tr.* at 124: 7 – 125: 14 (Smith) (Verizon cannot always identify originating carrier). Furthermore, Verizon's language ensures Cavalier that it will receive the same information Verizon uses to bill for its own terminating services. *Smith Direct* at 5:15-19, 6:2-3, 7:16-17; *Smith Rebuttal* at 6:12-14; *Hearing Tr.* 87:11-15, 128:1-12, 130: 2 – 131:1-3, 146:19-22, 148:17 – 149:15 (Smith).

Cavalier's proposal, however, would include additional language imposing a strict liability standard under which Verizon must either obtain whatever information Cavalier deems "sufficient information to allow proper billing," which includes more information than Industry

Guidelines require or that Verizon has in its possession, or pay Cavalier for its terminating services provided on behalf of third parties. *Smith Direct* at 3:19-20, 6:5 – 7:7.

Cavalier's proposal is contrary to the Bureau's ruling in the *Virginia Arbitration Order*. There, the Bureau recognized that no rule or precedent requires Verizon to provide transit services, but to the extent it voluntarily agrees to do so, it is not required to act as a billing intermediary·

> WorldCom's proposal would also require Verizon to serve as a billing intermediary between WorldCom and third-party carriers with which it exchanges traffic transiting Verizon's network. We cannot find any clear precedent or Commission rule requiring Verizon to perform such a function.

Virginia Arbitration Order ¶ 119. Nonetheless, Cavalier proposes to force Verizon into just this intermediary role and, in addition, to punish Verizon any time the originating carrier fails to provide Verizon with all the information that Cavalier wants.

Verizon's proposal, by contrast, tracks applicable industry standards. Consistent with the Bureau's rulings in the *Virginia Arbitration Order*, Verizon's proposed language (in Section 6.3.1) requires it to follow procedures for recording billing data set by the OBF, except as specifically modified in the contract or applicable tariffs. Section 6.3.7, likewise, embraces the OBF guidelines for exchanges of billing information among carriers and Section 7.2.2 obliges both parties to, in *all* cases, follows "the Exchange Message Interface ('EMI') standard and any applicable industry guidelines with respect to any exchange of records between the Parties." Verizon's Proposed Sections 7.2.2, *Smith Direct* at 4:2-5.

These sections are identical to the provisions in the AT&T Agreement resulting from the *Virginia Arbitration Order*. In approving this language, the Bureau said:

> AT&T has neither disputed Verizon's assertion that it is contractually committed to follow the OBF guidelines nor explained why it requires additional billing information beyond that already agreed to in the contract.

> We find that Verizon's concerns about having to juggle varying degrees of call detail for multiple and separate interconnection agreements are legitimate and that it is in the interest of all carriers to be able to rely on an industry forum that ensures carriers exchanging information can process, exchange and read the same records.

Virginia Arbitration Order ¶ 628 (citations omitted). Verizon also proposes, in Section 7.2.2, that "[i]n all cases" involving transit traffic, both parties "shall follow . . . any applicable industry guidelines with respect to any exchange of records between the Parties."

Verizon's proposal to rely on uniform Industry Guidelines is fair to Cavalier (and all other CLECs) and efficient for Verizon. Cavalier is not disadvantaged – on the contrary, Verizon makes information available to Cavalier in the same way Verizon makes information available to all other CLECs in Virginia, and hundreds of other carriers nationwide. *Smith Direct* at 5:15-19, 6:2-3. The Industry Guidelines continue to be refined and improved as the industry evolves. Cavalier has the option of participating in that process. Verizon has over 3600 interconnection agreements nationwide and must be able to rely upon a uniform set of information requirements. This result is also efficient for the industry, as it allows many carriers to process, exchange, and read the same records.

Cavalier, by contrast, would impose its own idiosyncratic billing information requirements, at odds with Industry Guidelines, and would penalize Verizon for not complying with them, even if that means providing billing information that Verizon does not have because it did not receive it from the originating carrier. These Cavalier proposals would require Verizon to "juggle varying degrees of call detail for multiple and separate interconnection agreements" – which the Bureau has already deemed too onerous an obligation. *Virginia Arbitration Order* ¶ 628. And, as noted above, it is unfair to punish Verizon for deficiencies in information that is generated by the originating carrier.

Cavalier also proposes in Section 6.3.9 to change the current process of putting billing data on billing tapes. Instead, Cavalier would require Verizon to transmit billing data exclusively in SS7 signaling streams. These Cavalier proposals would effectively gut the Industry Guidelines by encouraging individual carriers to forego the industry forums in favor of targeted relief available in a two-party arbitration. *See Smith Direct* at 10:6-10; *Hearing Tr.* at 127:12-20 (honoring Cavalier's request would require non-industry standard system modifications), 154:19 – 157:1.

Cavalier should be able to bill for its terminating services using the information it would receive under Verizon proposal; Verizon uses this same information to bill for its terminating services. *Smith Direct* at 5:15-19, 6:2-3, 7:16-17; *Smith Rebuttal* at 6:12-14; *see Hearing Tr.* at 128:18-20, 129:7 – 130:8, 146:16 – 147:12, 148:15 – 149:15. As Verizon witness Smith explained, Cavalier can negotiate directly with the originating carrier, just as Verizon does, to develop traffic studies or other information that it could use to bill. *Smith Direct* at 9:3-7. Use of traffic "factors" when billing information is not complete is common within the industry. *Smith Rebuttal* at 5: 6-15; *Hearing Tr.* at 130:18-21. Cavalier could also negotiate direct interconnections with these carriers and avoid Verizon's transit services altogether. *Smith Direct* at 3:16-17. Direct connections with even just several carriers could alleviate the majority of Cavalier's concerns. *Smith Rebuttal* at 7:15-17. At a minimum, Cavalier could participate in the industry forums where OBF guidelines are issued. *Smith Direct* 9:4-6; *Hearing Tr.* at 113:19 – 114:2.

Cavalier's reluctance to participate in industry forums is particularly surprising considering its own admission that its concerns are shared by the industry. During the Virginia section 271 proceeding, Cavalier acknowledged that its billing concern "is not just a problem

between Cavalier and Verizon, but is an industry wide problem that defies correction, as witnessed in the published OBF's meeting notes." *Virginia § 271 Proceeding*, Cavalier Oct. 14, 2002 Ex Parte Letter at 1-2 (footnote omitted). But, rather than work with Verizon and other carriers to address its concerns, Cavalier frames the issue of third parties not providing appropriate billing information as entirely "Verizon's problem." *Whitt Rebuttal* at 2:4. Thus, it seeks to require Verizon to "police the meet point billing process" and "if Verizon will not police the records on its end [Cavalier's] contract language would protect Cavalier from revenue shortfall, with a default billing to Verizon." *Whitt Direct* at 8:2, 9:18-20. Of course Cavalier describes this as a "really simple solution" because it absolves Cavalier of any responsibility whatsoever. *Whitt Direct* at 9:18. The real solution to these problems cannot be reached here through adoption of provisions to appear in a bilateral interconnection agreement. *Smith Direct* at 9:24, 10:1-2; *Smith Rebuttal* at 7:24 – 8:2. They should be addressed in the context of the proper industry forum in which all affected carriers may participate.

Cavalier's allegations of call misrouting only highlight Cavalier's deficiencies in understanding the billing information it is already being provided. For example, Verizon witness Smith explained, and Cavalier admitted, that at least some of the traffic that Cavalier alleges is access traffic improperly routed over local trunks is likely traffic from roaming wireless customers that properly belong on local trunks. *See Smith Rebuttal* at 2:4-13; *Cole Surrebuttal* at 2:18-20 (agreeing with Mr. Smith that wireless minutes could account for this data). Billing records for other calls, which Cavalier implies are purposely disguised, are nothing of the sort. These records, in which the same telephone number appears in the "From Number" and "To Number" data field, are calls for which the originating carrier has not supplied the "From Number." Originally, this data field was filled with zeros, but some independent telephone

companies were unable to process such records. So, Verizon copied the "To Number" to the "From Number" field so that these records could be processed. *Smith Rebuttal* at 6:19-25. This accommodation is now common among incumbents and is perfectly appropriate. *Smith Rebuttal* at 6:25.

For these reasons, the Bureau should accept Verizon's Proposed Sections 5.6 and 6.3 (which Cavalier does not challenge), and reject Cavalier's proposed Sections 1.12(b), 1.46, 1.48, 1 62(a), 1.87, 5 6.6, 5.6.6.1, 5.6.6.2, and 7.2.2.

IV. CAVALIER SHOULD BE RESPONSIBLE FOR CHARGES BY THIRD PARTIES FOR CAVALIER-ORIGINATED TRAFFIC THAT TRANSITS VERIZON'S NETWORK (ISSUE C4)

This issue involves transit calls that Cavalier originates and sends to a Verizon tandem, which Verizon then sends to a third carrier for termination on behalf of Cavalier. The terminating carrier should bill Cavalier directly for these calls. However, if the terminating carrier bills Verizon rather than Cavalier for this traffic and Verizon bills Cavalier for this traffic, Verizon's Proposed Section 7.2.6 would enable Cavalier to participate in disputing these charges of the terminating carrier, but would make Cavalier ultimately responsible for the charges associated with these call. Verizon's Proposed Section 7.2.6 (as revised in the Final Offer filed on October 24, 2003) also addresses Cavalier's concerns regarding improper third-party charges. Cavalier's proposed language, however, would compensate Verizon for only those third-party charges that Cavalier deems "properly" imposed.

Verizon's proposal is more consistent with the Bureau's findings in the *Virginia Arbitration*. The Bureau recognized in that case that Verizon is not required "to serve as a billing intermediary between WorldCom and third-party carriers with whom it exchanges traffic transiting Verizon's network." *Virginia Arbitration Order* ¶ 119. Rather, Cavalier and the third-

party carriers that terminate Cavalier-originated calls should develop arrangements, consistent with the industry norm, by which these third parties bill Cavalier directly. *Smith Direct* at 12:11-12. Until such arrangements are reached, Verizon offers the following compromise: to the extent that third-party carriers bill Verizon for Cavalier-originated traffic (and Verizon passes on these charges to Cavalier), Verizon will cooperate with Cavalier in disputing any charges that Cavalier desires to dispute. But, Cavalier will reimburse Verizon in full for the charges and any other costs Verizon reasonably incurs in disputing them, and in the event Verizon is later ordered to pay such disputed charges, Cavalier will reimburse Verizon for those charges.

Verizon's proposal addresses Cavalier's concerns regarding improper third-party charges, but without forcing Verizon to pay charges that are Cavalier's responsibility. As Verizon witness Smith testified at the Hearing, Verizon's language "was an attempt to address some of Cavalier's concerns regarding third party charges that are passed, and that if Cavalier wished us to dispute those charges on their behalf, we would be happy to do that, as long as they would indemnify us, should we ever be held liable for those charges." *Hearing Tr.* at 165:20-22 (Smith). It also ensures, consistent with the principles the Commission recognized in its *ISP Remand Order*, that Cavalier's customers will receive appropriate pricing signals associated with the traffic they originate and that Cavalier will not inappropriately shift its costs to Verizon. *See ISP Remand Order* ¶¶ 4, 69-71. Given that Verizon is neither obligated to provide transit traffic service nor required to act as a billing intermediary when it does transit Cavalier's traffic, Verizon's proposal is reasonable.

The Bureau should also reject Cavalier's proposed language that would make the transit provisions of the agreement "reciprocal." It is undisputed that Cavalier does not currently provide transit services to Verizon. *Hearing Tr.* at 174:17-19 (Clift). Verizon agrees that the

transit provisions of the agreement should be reciprocal, but instead of revising several different contract provisions to accomplish this, Verizon proposes that only Section 7.2.7 specifically address this issue. Transit obligations affect numerous detailed contract provisions, and it would be complicated and potentially confusing to make specific changes to all of these sections for a service Cavalier does not yet offer. *Smith Direct* at 13:2-7. Verizon's proposal is simpler. It makes clear, in a single section of the agreement, that when a third party carrier's central office subtends a Cavalier central office, Cavalier will make available to Verizon a service arrangement equivalent to, or the same as, the tandem transit service Verizon provides to Cavalier under terms and conditions no less favorable to Verizon as those provided by Verizon to Cavalier.

The Bureau should adopt Verizon's proposal because it ensures that Cavalier, the originating carrier, pays the charges associated with its own traffic, but also enables Cavalier to dispute such charges. Verizon's proposal will, in addition, ensure that the parties have reciprocal obligations when Cavalier does offer transit service.

V. THE BUREAU SHOULD REJECT CAVALIER'S PROPOSED CONTRACT LANGUAGE REQUIRING VERIZON TO HELP CAVALIER NEGOTIATE CONTRACTS WITH OTHER CARRIERS (ISSUE C5)

Cavalier proposes language that would compel Verizon to assist Cavalier in its negotiations of traffic exchange agreements with third-party carriers. The Bureau has already rejected this type of proposal in the *Virginia Arbitration Order* and should do so again here.

Verizon's Proposed Section 7.2.8 provides that Verizon will not hamper negotiations between Cavalier and carriers that exchange traffic with Cavalier over Verizon's network. To the extent Cavalier makes reasonable efforts to negotiate these reciprocal traffic exchange agreements, if those efforts are not successful, Verizon will make commercially reasonable efforts to assist Cavalier in facilitating further discussions. For example, Verizon will provide to

Cavalier, upon request, the names, addresses and phone numbers of points of contact of the carriers with which Cavalier wishes to establish reciprocal traffic arrangements, provided that Verizon has such information. Verizon's Proposed Section 7.2.8; *Smith Direct* at 13:20-23.

In contrast, Cavalier proposes open-ended language that would require Verizon to assist Cavalier in negotiating agreements with any carriers that exchange traffic with Cavalier. Cavalier's Proposed Section 7.2.8. Under this proposal, if Cavalier wishes to negotiate traffic exchange agreements with any carrier with whom Verizon is "materially involved" in providing transit services, Verizon would be required to provide timely information, respond to inquiries, and even participate in Cavalier's negotiations with the third-party carrier. *Smith Direct* at 14:2-7.

Cavalier's proposal goes far beyond what the Act requires. The Act requires only that local exchange carriers interconnect, and establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic. 47 U.S.C. §§ 251(a)(1), 251(b)(5). It does not, as the Bureau clarified in the *Virginia Arbitration Order*, require LECs to act as contract negotiation intermediaries for third parties:

> We are not persuaded by WorldCom's arguments that Verizon should incur the burdens of *negotiating interconnection and compensation arrangements* with third-party carriers. Instead, we agree with Verizon that interconnection and reciprocal compensation are the duties of all local exchange carriers, including competitive entrants.

Virginia Arbitration Order ¶ 119 (emphasis added).

In any event, Cavalier's claims that Verizon need explain to Cavalier its current interconnection arrangements with other carriers are groundless. *Clift Direct* at 2:20-24; 4:1-8. Verizon submits its interconnection agreements to the Virginia SCC. 47 U.S.C. § 252(e). These documents (and Verizon's tariffs), reflect the arrangements upon which Verizon provides service

to third parties and are publicly available to Cavalier and other carriers. Cavalier (and anyone else) may review these documents without unnecessarily involving Verizon.

Cavalier may also obtain information about a carrier's financial arrangement with Verizon directly from that carrier. *Hearing Tr.* 176:22 – 179:1 (Clift admission); *Smith Direct* at 14:10-12. These carriers will have the same information about their arrangement with Verizon as will Verizon, and would be the logical party to ask for information relevant to the arrangement. *Smith Rebuttal* at 9:3-5. Furthermore, Cavalier's proposed language is unduly vague, and there is no telling how broadly Cavalier may try to interpret it in practice. For example, Cavalier might use this language to justify requests for confidential or otherwise competitively sensitive information about other carriers. In such a case, Verizon might be put in the untenable position of disclosing the requested information and potentially facing liability from the third party, or withholding the information and, under Cavalier's interpretation of its language, risk breaching its agreement with Cavalier.

Cavalier's proposal would also unduly burden Verizon. *Smith Direct* at 13:13, 14: 9, 12-17. If Cavalier's language is included in the agreement and if other carriers in Virginia adopt it, Verizon could quickly become the industry's negotiation intermediary. 47 U.S.C. § 252(i). The costs to Verizon of performing this role would be substantial. *Smith Direct* at 14:15; *Smith Rebuttal* at 9; 7-12.

Cavalier claimed that without Verizon's assistance it is unable to enter into interconnection arrangements with third parties, but its own evidence belies that assertion. Cavalier admitted that it had successfully completed interconnection negotiations with Cox Communications and had entered into arrangements with several other carriers. *Clift Direct* at 4:17-19, 5:3; *Hearing Tr.* at 182:11-13. Although Cavalier complained that these negotiations

were protracted, there is no reason to believe that Verizon's participation would have expedited the negotiations. Lengthy interconnection negotiations are not uncommon and negotiation delays may occur for any number of reasons. *Smith Rebuttal* at 9:1-2.

Cavalier's witnesses also erroneously imply that Verizon is trying to maintain the revenue it earns from Cavalier's transit traffic. This too is false. First, Cavalier's claim flies in the face of the express limitations Verizon routinely places on such traffic, including in the parties' proposed agreements here. *See Virginia Arbitration Order* ¶¶ 115-119; Verizon's Proposed Sections 7.2.3, 7.2.4 (Exhibit C to Verizon's Answer to Cavalier's Petition) (requiring Cavalier to use its best efforts to enter into reciprocal traffic exchange agreements with other carriers and limiting the number of minutes of tandem transit service Verizon will provide). If, as Cavalier asserts, Verizon desired to retain transit traffic on its network, it would not impose such limitations. Cavalier's only supposed support for this position – a Verizon ex parte letter to the Commission regarding transit traffic – in fact only shows that Verizon consistently maintains that it has no legal obligation whatsoever to transit traffic. *Clift Rebuttal* at Exhibit MC-2R.

When Cavalier seeks direct interconnection arrangements with third parties, it should be responsible for negotiating those arrangements. The law and sound public policy require that it do so without Verizon as an intermediary. For these reasons, the Bureau should adopt Verizon's proposal for section 7.3.8 and reject Cavalier's.

VI. THE BUREAU SHOULD REJECT CAVALIER'S PROPOSED REVISIONS TO VERIZON'S RETAIL E 9-1-1 TARIFF (ISSUE C6)

Cavalier's contract proposal for E 9-1-1 services is built on three erroneous propositions.

- First, Cavalier wants Verizon to change its *retail* E 9-1-1 tariff, even though this Section 251 arbitration concerns only with the *wholesale* services that Verizon provides to Cavalier. The Virginia SCC has already initiated a proceeding to examine how carriers tariff retail charges for E 9-1-1 in Virginia.

- Second, Cavalier's claim is based on the erroneous assumption that, as Cavalier's E 9-1-1 costs increase, Verizon's E 9-1-1 costs decrease, dollar for dollar. Verizon's unrebutted testimony explains why Cavalier is simply wrong.

- Third, Cavalier erroneously claims that Verizon should be obligated to explain Cavalier's E 9-1-1 charges to local governments in Virginia. That is Cavalier's responsibility, not Verizon's.

Cavalier proposes contract language that would require Verizon to revise its *retail* E 9-1-1 tariff to reflect functions that Cavalier claims it performs. *Cavalier's Proposed Section* 7.3.10. Cavalier's proposed contract language has nothing to do with wholesale services that Verizon provides to Cavalier and nothing to do with prices that Verizon charges Cavalier for any E 9-1-1 service. Instead, Cavalier's proposed language relates solely to what Verizon charges third parties (local governments) under Verizon's retail tariff. *Green Direct* at 2:4-8.

The only E 9-1-1 claims that this Section 251 arbitration could consider are claims that Verizon does not provide non-discriminatory access to wholesale E 9-1-1 services. The Commission, however, has already concluded that Verizon meets its obligations under the Act for E 9-1-1:

> Based on the record before us, we conclude, as did the Virginia Hearing Examiner, that Verizon has demonstrated that it provides nondiscriminatory access to E911 services and databases using the same checklist compliant processes and procedures that it uses in section 271-approved states.

Virginia § 271 Order ¶ 189 (citations omitted).

The Virginia SCC has initiated a proceeding that will address Cavalier's concern that Verizon's retail charges for E 9-1-1 services somehow duplicate the charges of CLECs such as Cavalier, and that Verizon's retail E 9-1-1 charges should be reduced wherever Cavalier is also providing E 9-1-1 services. *See Order for Notice and Comment or Requests for Hearing, Ex Parte: In the Matter of Establishing Rules Governing the Provision of Enhanced 911 Service by Local Exchange Carriers*, Case No. PUC-2003-00103 (Virginia SCC August 1, 2003). All

parties, including Cavalier, have already filed comments in that proceeding. The Virginia SCC's proceeding is the proper place to decide these retail E 9-1-1 issues because, unlike this two-party arbitration, it offers all interested parties – local governments, CLECs, and Verizon – an opportunity to participate. That is precisely what the Virginia Hearing Examiner concluded during Verizon's section 271 proceeding in Virginia, where Cavalier raised the same E 9-1-1 issue it raises again here:

> such an issue should be raised in a proceeding addressing the rates, terms and conditions by which Verizon Virginia and CLECs provide E-911 service, *where all interested parties, including Chesterfield County and other localities may participate.*

Virginia Hearing Examiner's Report at 131 (emphasis added).

Cavalier nevertheless asks the Bureau to provide some interim relief to Cavalier; otherwise, Cavalier claims, local governments in Virginia may withhold E-9-1-1 payments due Cavalier. Cavalier's Proposed Agreement Section 7.3.10; *Hearing Tr.* at 188:7-14 (Clift). But Cavalier's testimony and evidence references only one county in Virginia (Chesterfield County) where there appears to be a dispute about whether Verizon's E 9-1-1 charges duplicate Cavalier's, and Chesterfield County informed Verizon that the County is awaiting resolution of the issue by the Virginia SCC. *See Letter from Michael P. Kozak (Chesterfield County) to P.J. Rhyne (Verizon)*, dated September 30, 2003, attached at Exhibit 1.

Cavalier proposes that Verizon's retail E 9-1-1 charges to local governments in Virginia should decrease, dollar for dollar, for any E 9-1-1 charges assessed by Cavalier to those same local governments. Cavalier's Proposed Section 7.3.10. However, Verizon's costs associated with E 9-1-1 service do not decrease simply because a competitor also offers E 9-1-1 service. Verizon still incurs costs associated with E 9-1-1 tandems/routers, databases containing customer information, and the installation and maintenance of trunks to the local jurisdictions. *Green*

Direct at 5.10-14. Although Cavalier provides transport from its central offices to Verizon's E 9-1-1 tandem switch (*Clift Direct* at 7:14-15) Verizon's costs of providing E 9-1-1 facilities to local governments do not decrease simply because Cavalier provides these facilities. Verizon must still provide the transport from its own central offices to the E 9-1-1 tandem; it must still provide the same connections from that tandem to the Public Safety Answering Points; and it must still maintain the E 9-1-1 database. *Green Rebuttal* at 4:9-15.

Cavalier's proposed language would also require Verizon to send a "joint letter" to Public Safety Answering Points in Virginia "explaining technical, operational, and compensation procedures applicable to each party regarding the 911/E911 arrangements." Cavalier's Proposed Section 7.3.9. There is no basis in the Act or the Commission's rules to require Verizon to help Cavalier explain its bills and tariffs. As Verizon witness Green explained at the hearing:

> [W]e deal with literally thousands of CLECs and we deal with thousands – literally thousands of PSAPs, and in all cases, we support our own rates, through either contracts or tariffs in the individual jurisdictions. It would be a very, very difficult task for us to go in and support everybody else's rates, and we simply wouldn't have the knowledge to do that.

Hearing Tr at 190:11-18 (Green).

For all these reasons, the Bureau should reject Cavalier's proposed Sections 7.3.9 and 7.3.10.

VII. CAVALIER'S PROPOSED CHANGES TO VERIZON'S LOOP OFFERING AND LOOP QUALIFICATION LANGUAGE SHOULD BE REJECTED (ISSUE C9)

Verizon has proposed language describing the terms under which it offers unbundled loops. Virtually all of that language comes directly from the AT&T agreement resulting from the *Virginia Arbitration Order*, except for compromise language offered to satisfy Cavalier's concerns. Cavalier, nevertheless, deletes whole sections of this language without proposing any language of its own, makes meritless claims that it is being denied necessary services, asks the

Bureau to revise rates without submitting any costs studies, even though the Commission has approved Verizon's rates in the Virginia section 271 proceeding, and demands preferential treatment in a number of areas. All of these Cavalier proposals should be rejected.

A. Verizon's Proposed Contract Language Accurately Defines The Types Of Loops That Cavalier Currently Orders From Verizon

Cavalier deletes the majority of Verizon's Proposed Section 11.2, which describes kinds of loops offered by Verizon, because that section is "overly complex" and does not correspond to the types of loops Cavalier orders. *Edwards Direct* at 2:9-10. This is incorrect. Verizon witness Clayton testified that Verizon's contract language describes precisely the loops that Cavalier currently orders from Verizon, and the language is not "overly complex." The language describes the loops that are available for Cavalier to purchase and the process through which those loops can be qualified. Verizon's language spells out the applicable technical standards and the rights and obligations of each party. Even if Cavalier had identified a real problem with any particular part of this language, which Cavalier has not done, wholesale deletion of all this language is no solution at all and will only lead to confusion and disputes between the parties. *Albert Panel Rebuttal* at 6:1-6.

Cavalier has also proposed to delete most of Verizon's proposed loop qualification language, again without criticizing any of the specific language or offering any alternative language. Cavalier's deletion would thus leave Cavalier without essential contract language governing the loop qualification information necessary to offer xDSL service to its customers. *Albert Panel Direct* at 8:6-10.

To prevent this result, the Bureau should approve all of Verizon's contract language describing Verizon's loop qualification tools, which have been agreed to collectively by the CLECs in the New York DSL Collaborative, and which have been approved by several state

commissions, including the Virginia SCC. *See, e.g., Virginia Hearing Examiner Report* at 111. The Commission has considered Verizon's loop qualification process in all of its section 271 proceedings. In all cases, the Commission found that Verizon's loop qualification process complies with the Act. *See generally Rhode Island § 271 Order* ¶ 61; *New Jersey § 271 Order* ¶ 76 n. 204; *New York § 271 Order* ¶ 140. In the Virginia section 271 proceeding, the Commission confirmed that:

> Verizon provides competitive LECs with access to loop qualification information consistent with the requirements of the *UNE Remand Order*. Specifically, we find that Verizon provides competitors with access to all of the same detailed information about the loop that it available to itself and in the same time frame Verizon personnel obtain it.
>
> * * *
>
> We find, based on the evidence in the record, that Verizon is providing loop qualification information in a nondiscriminatory manner.

Virginia § 271 Order ¶¶ 29, 34. While Verizon has enhanced its loop qualification process since the Commission issued the *Virginia § 271 Order* to accommodate several CLEC requests, the contract language deleted by Cavalier has not changed. *Albert Panel Direct* at 9:9-12. *Hearing Tr* at 436:3 – 437:8 (Clayton). The Bureau should approve Verizon's language here as well.

B. Verizon Currently Offers Cavalier The Option To Purchase Loops Over 18,000 Feet In Length.

Cavalier also proposed to delete Verizon's proposed section 11.2.12(A), which defines "Digital Designed Loops" to include 2-wire digital loops with a total loop length of 18,000 to 30,000 feet, with bridged taps and load coils removed, at Cavalier's option. This offering, which has been available to CLECs for several years, allows CLECs to provide xDSL services on long loops. *Albert Panel Direct* at 9:17-22. As Verizon witness Clayton explained at the Hearing:

> Cavalier is requesting a loop over 18,000 feet, out to, I believe, 30,000 feet. [Cavalier] can get that today. [Verizon does] not believe that

> [Verizon has] done anything to restrict [Cavalier] from taking advantage of that offering. In addition, [Verizon] offer[s] conditioning options on an 18 to 30,000 foot loop. If Cavalier needs to have that loop conditioned, meaning load coils removed, Verizon will perform that activity.

Hearing Tr. at 424:1-9 (Clayton).

Cavalier has never adequately explained why it deleted this language. Cavalier witness Edwards submitted testimony that Cavalier "did not necessarily need all of the features" described in this contract language (*Edwards Rebuttal* at 2: 4-7), but has not provided any reason explaining what portion of Verizon's language he objected to.

Mr. Edwards also stated in his testimony that Verizon had refused to provide Cavalier with xDSL loops over 18,000 feet (*Edwards Rebuttal* at 2:2-3), but he provided no substantiation, and the Commission has previously rejected this same vague claim. In the *Virginia § 271 Order*, the Commission held:

> Cavalier complains that Verizon refuses to provide loops over 18,000 feet to competing carriers seeking to offer xDSL service even when competitive LECs' equipment is capable of offering DSL services at those loop lengths. Verizon clarifies that it does offer such loops through its loop conditioning offerings. Although DSL-capable loops typically contain load coils that are necessary for the provision of voice service, Verizon states that it will remove these load coils for a competitive LEC pursuant to an interconnection agreement and subject to applicable loop conditioning charges. In the absence of additional evidence to the contrary, we find that Verizon's offerings for the provision of DSL-capable loops over 18,000 feet are reasonable....

Virginia § 271 Order ¶ 149. Verizon's proposed contract language offers these same options to Cavalier, so the Bureau should adopt that language.

C. Verizon Does Not Use Spectral Density Masks To Prevent Cavalier From Deploying "Reach DSL" Technology

Cavalier also claims that Verizon's spectral density masks prevent Cavalier from deploying DSL on loops over 18,000 feet. *Vermeulen Direct* at 2:1-13. A spectral density mask

imposes power and frequency limits on xDSL service in order to prevent that service from interfering with other telecommunications services sharing the same loop. *Albert Panel Direct* at 10:20-22; *Line Sharing Order* ¶ 182 n. 390. Industry standards bodies, with input from ILECs, CLECs, and equipment vendors, in addition to lab testing results, establish the spectral density mask limitations on xDSL services that Verizon uses and that are reflected in Verizon's proposed language. If a carrier providing xDSL service over that loop does not stay within the limitations of the spectral density mask, the loop may not work, or, other voice or data loops for other CLECs or end users within the same binder group may be affected. *Albert Panel Rebuttal* at 9:10-18.

Verizon complies with these National Standards and all Commission rules and orders relating to xDSL technologies and interference issues. *Albert Panel Direct* at 10:24 – 11:1. In the *Line Sharing Order*, the Commission specifically approved the use of spectral density masks to limit interference from xDSL services. *Line Sharing Order* ¶ 6. Verizon's use of spectral density masks is consistent with that order and with 47 C.F.R. § 51.231(a)(1), which requires Verizon to disclose limitation, such as spectral density masks, on xDSL services provided over its loops. In fact, the industry-wide standards with which Verizon complies are publicly available.

Verizon does not use spectral density masks to prevent Cavalier from deploying its "Reach DSL" technology. The following exchange at the Hearing between Cavalier's counsel and Verizon witness Clayton makes this clear:

> Perkins: It's true, isn't it, that Verizon has some very specific power spectral density limitations in the language it has proposed to Cavalier, isn't it?
>
> Clayton: I don't agree, no.
>
> Perkins. Why not?

> Clayton: Again, I don't think that any of the loops for DSL product line prevents Cavalier from ordering anything, specifically their Reach DSL product that's been referenced to here. That product can be ordered today over a two-wire digital designed metallic loop that's between 18 and 30,000 feet. [Verizon has] not prevented Cavalier from ordering that loop type. [Verizon has] not prevented other CLECs from ordering that loop type. It is something that is in our contract. [Verizon has] recently revised the language. It is available to CLECs and CLECs are ordering it today.

Hearing Tr at 421:4-21 (Perkins/Clayton). Furthermore, Verizon has never denied Cavalier's request to provide DSL services over a particular loop, and Verizon has never denied Cavalier's request to deploy any DSL technology.[1] *Hearing Tr.* at 421:16-17 (Clayton).

However, in response to concerns that Cavalier raised at the hearing, Verizon has offered a compromise Section 11.2.8(a), clarifying the spectral density mask specification applicable to xDSL loops over 18,000 feet. *See Verizon Final Offer*, at 5-6. Cavalier appears to agree with most of Verizon's compromise language, but now wants to extend the technological specifications of Verizon's compromise loop offering to include loops under 18,000 feet, even though loops under 18,000 feet were never put at issue by Cavalier. *See Cavalier's Petition*, Exhibit A at 2. Verizon, however, cannot extend the technological specifications of its compromise language to loops under 18,000 feet because these shorter loops use a different technical specification, and Verizon's ordering, provisioning, and maintenance systems would have to be substantially modified to have shorter loops meet the longer loop technical specification. Verizon's proposed compromise language should therefore be adopted.

[1] Therefore, in answer to Staff's question at the Hearing, 47 C.F R. Sections 51.230 and 51.231(a)(2)-(3) are not relevant here because the obligations imposed by these sections apply to incumbents when they deny a requesting carrier's request to use a specific technology

D. Cavalier's Unprecedented Request For A 60-Day Transfer Period For Potential Cavalier DSL Customers Should Be Rejected.

Cavalier proposes that if it has used the mechanized or manual loop qualification tools described above and been informed that a particular customer's loop does not qualify for xDSL service, and if, within 60 days Verizon provides xDSL to that same customer, Verizon would be required to transfer that customer to Cavalier at no cost to Cavalier. Cavalier's Proposed Section 11.2.13. Cavalier's proposal is an attempt to avoid paying for the costs that must sometimes be incurred to make an xDSL loop available. *Albert Panel Direct* at 12:22-23.

Even if the manual or mechanized process reports that a customer's loop is unqualified for xDSL, Cavalier does not have to abandon its attempt to provide xDSL service to that customer. First, if the customer can be switched to a different loop that does qualify for xDSL, Verizon will make this change, called a "line and station transfer," provided that Cavalier pays the costs of the procedure. Second, if the customer cannot be switched to a qualifying loop, Cavalier can pay the costs of conditioning the customer's existing loop (for example, by removing load coils on loops over 18,000 feet) so that Cavalier can provide the customer with xDSL service. *Albert Panel Direct* at 13:1-8.

If Cavalier chooses not to pay for these costs, that customer may well call another carrier (for example, Verizon) to see whether it can provide service. Verizon would use the same loop qualification tools available to Cavalier and discover that the loop is not qualified. But if Verizon is willing to pay the costs of transferring the customer to a qualifying loop or the costs of conditioning the customer's existing loop, Verizon can serve the customer. This is entirely appropriate: Verizon and Cavalier have exactly the same options. Yet, under Cavalier's proposal, if Verizon bears the costs of making an xDSL capable loop available to the customer, Verizon would still have to turn the customer over to Cavalier free of charge. Cavalier's

proposal would therefore allow Cavalier to improperly shift its costs to Verizon. *Albert Panel Direct* at 13:9-18.

Indeed, Cavalier cannot cite to a single example of the situation that Cavalier's contract language is designed to remedy. In his Direct Testimony, Cavalier's witness Mr. Edwards admits that Cavalier's proposal is based on "anecdotal" situations that Cavalier "has never been able to track precisely." *Edwards Direct* at 1:22 – 2:4. His Rebuttal Testimony provided no more detail, acknowledging that "Cavalier does not have extensive information about [these situations]." *Edwards Rebuttal* at 2:13-16. Cavalier's proposed language on this issue is an extreme solution in search of a problem, and should therefore be rejected.

E. Verizon Always Provides A 4-Wire Transmission Channel When Cavalier Requests One.

Cavalier claims that it will not be able to order a 4-wire DS-1 loop under Verizon's Proposed Section 11.2.9. *Webb Direct* at 2:8-10. In fact, under Verizon's proposed language, Cavalier can order a DS-1 loop with a 4-wire interface at each end. *Hearing Tr.* at 430:17 – 431:5 (Clayton). Verizon chooses the technology between the interfaces. In some cases, that may be 2-wire facility using sophisticated HDSL-2 electronics, but in all cases, Cavalier receives the capacity of a "four-wire transmission channel." *Hearing Tr.* at 430 :17-19 (Clayton). As long as Verizon delivers the DS-1 capacity that Cavalier has ordered and the 4-wire interface that it wants to use, Verizon should be able to use whatever technology between the interfaces that Verizon chooses.

If Cavalier wishes to use another type of loop for the delivery of DS-1 services, such as one that uses another type of electronics or more metallic pairs, then the contract gives it that opportunity through the 2-Wire and 4-Wire HDSL-Compatible Loop offerings detailed in

Sections 11.2.5 and 11.2.6 of Verizon Proposed Agreement. *Albert Panel Rebuttal* at 8:26 – 9:5. Cavalier can then supply its own electronics with these loop types to provide DS-1 service.

F. The Bureau Should Reject Cavalier's Proposal To Import Rates For Loops And Loop Conditioning From Other States.

Cavalier objects to Verizon's current loop conditioning rates in Virginia.[2] Cavalier ignores these rates and asks that the Bureau set rates for loop conditioning "[a]t the lowest Verizon rate approved by a public service commission within Cavalier's footprint." Cavalier's Proposed Agreement, Exhibit A. The Commission has examined and rejected Cavalier's complaints about Verizon's Virginia loop conditioning rates in the Virginia section 271 proceeding. *Virginia § 271 Order* ¶¶ 124 – 126. ("[W]e find that Verizon's use of proxy rates produced rates that are within the range that a reasonable application of TELRIC principles would produce, and therefore, we reject Cavalier's argument."). During the Hearing, Cavalier also specified that it wanted to import the loop-conditioning rate from Maryland. *Hearing Tr* at 470:13-16 (Perkins). The Commission, however, already rejected the exact request in the Virginia section 271 proceeding. *Virginia § 271 Order* ¶ 128. Cavalier has offered no good reason for revisiting the Commission's determination here.

Cavalier has filed no cost studies to support its rate proposal, nor has Cavalier submitted any evidence to support its contention that Verizon's Virginia rates are otherwise inappropriate. Since rates must be cost-based, the Bureau cannot set rates without cost studies. Therefore, the Bureau should reject Cavalier's rate proposal and approve the TELRIC-compliant rates for loops and loop conditioning that the Commission has already approved in the Virginia Section 271 proceeding In addition, Cavalier proposes that the loop conditioning rates in its contract should

[2] Staff asked Verizon to provide the source for each of the rates Verizon charges in Virginia. That information is attached as Exhibit 2

automatically become the rates the Bureau approved in the *Virginia Arbitration Cost Order*. Consistent with Section 252(i) of the Act, Verizon will make available any "interconnection, service, or network element" upon the same terms and conditions as those provided in AT&T's agreement. Neither the Act nor the Commission's rules, however, permit a party to adopt a rate separate from the terms and conditions for providing that network element. Instead, in order for a carrier to adopt a rate pursuant to Section 252(i), it must also adopt the legitimately related terms and conditions of the element associated with that rate.[3] But since Cavalier has requested various changes to the language in the AT&T agreement, under Section 252(i) it can only opt into the loop conditioning rates if it also adopts the accompanying terms and conditions. But Cavalier has not said whether it wants the accompanying terms and conditions (and indeed in some cases is affirmatively asking the Commission for terms that are contrary to those in the *Virginia AT&T Agreement*). Therefore, it would be premature for the Commission to decide now, without knowing whether Cavalier will adopt *all* the related terms and conditions, that Cavalier is entitled to AT&T's rates for loop conditioning.

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[3] *See In re US Xchange of Indiana, LLC*, 2002 WL 1059769, at ~5 [slip copy, page numbers not defined] (Ind URC Mar. 13, 2002) ("This Commission supports and encourages adoptions pursuant to Section 252(i). Allowing a carrier to adopt into provisions of previously negotiated or arbitrated agreements is certainly pro-competitive. However, it is clear from the Act, the FCC and the U.S. Supreme Court that those adoptions must incorporate the rates, terms and conditions that are legitimately related to the individual interconnection, service or element."); *In Re Rhythms Links, Inc* , Docket No 20226, 1999 WL 33590962, slip copy at ~104 [page numbers not defined] (Tex P U C Nov 30, 1999) ("The Arbitrators find that Rhythms is entitled to 'pick and choose' rates and conditions from other, already approved, interconnection agreements. The Arbitrators find that Rhythms may 'pick and choose' individual elements and rates when it agrees to adopt the legitimately related terms and conditions."); Order on Arbitration; *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 ¶ 1315 (1996) ("[w]e conclude that the 'same terms and conditions' that an incumbent LEC may insist upon shall relate solely to the individual interconnection, service, or element being requested under section 252(i).")

G. Cavalier Is Not Entitled To Expedited Maintenance Intervals For xDSL Loops.

Cavalier proposes that Verizon should respond to trouble tickets for all xDSL loop types within the same interval that Verizon responds to trouble tickets for DS-1 loops. Cavalier's Proposed Section 11.2.12. Cavalier's proposal should be rejected for several reasons.

First, Cavalier's proposal is inconsistent with the Virginia Carrier-to-Carrier Guidelines, under which Verizon's maintenance intervals for xDSL loops are measured against Verizon's maintenance intervals for Plain Old Telephone Service, not DS-1 loops. *Virginia Carrier-to-Carrier Guidelines* at 6; *Albert Panel Direct* at 11:21-23.

Second, because maintenance intervals for xDSL typically are longer than DS-1 maintenance intervals, both for Verizon's customers and for other CLEC customers, Cavalier's maintenance interval proposal would result in Cavalier receiving better service for many xDSL loops than other CLEC customers. *Albert Panel Direct* at 12:1-5.

Third, Cavalier's request for unique maintenance intervals is not feasible. If Cavalier has its own set of intervals, other CLECs will want the same. Verizon has interconnection agreements with 180 CLECs in Virginia, and Verizon cannot be expected to shoulder the burdens of administering 180 different sets of intervals. *Albert Panel Direct* at 12:5-9.

Fourth, even if Verizon could administer such a system, both the Virginia Carrier-to-Carrier Guidelines and the Virginia PAP are based on standard intervals for all CLECs. Implementing CLEC-specific intervals would be inconsistent with both the Carrier-to-Carrier Guidelines and the PAP and would greatly complicate reporting. For these reasons, the Bureau should reject Cavalier's proposal for unique maintenance intervals. *Albert Panel Direct* at 12:9-13.

For all of the reasons stated above, the Bureau should reject Cavalier's proposed language on this issue.

H. Verizon Has Not Waived Any of Its Loop Qualification Language

Cavalier argues that Verizon should be foreclosed from proposing parts of its loop qualification language because they relate to Issue V26 which, Cavalier claims, has been "waived or released by Verizon." Cavalier's Reply to Verizon's Answer at 4. Cavalier apparently makes this waiver claim because Verizon did not specifically reference Issue V26 in its Answer. As Cavalier acknowledges in Exhibit A of its Petition, however, Issues C9 and V26 are the same. Both issues address the fact that Cavalier strikes all of Verizon's language in Section 11.2.12, which concerns loop qualification. Consistent with the Commission's rules, Verizon provided the basis for Verizon's position on this issue as well as the relevant legal authority in its Answer filed on September 5, 2003. Therefore, there is no basis for accepting Cavalier's contention that Verizon has waived or released its claim to include any of the language in Section 11.2.12 in the parties' agreement because Verizon did not specifically mention Issue V26.

VIII. THERE IS NO SUPPORT FOR CAVALIER'S PROPOSED CHANGES TO VERIZON'S PROCESSES FOR PROVISIONING DARK FIBER (ISSUE C10)

There is no problem with Verizon's dark fiber provisioning in Virginia, so there is no need for Cavalier's proposed extreme revisions to Verizon's dark fiber processes. During Verizon's section 271 proceeding in Virginia, the Commission examined Verizon's dark fiber offering in detail, including the changes required by the Bureau in the Virginia Arbitration Order, and concluded that Verizon's dark fiber provisioning methods fully complied with Verizon's obligations under the Act. *Virginia § 271 Order* at 145-147. Because Cavalier has not identified